

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket Numbers 54046
& 54047**

Petitioner:

PRUSSE LAND CO. ET AL (54046)

&

PRUSSE LAND COMPANY LLLP (54047),

v.

Respondent:

DOUGLAS COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 12, 2011, Diane M. DeVries and Gregg Near presiding. Petitioner was represented by T. Michael Carrington, Esq. Respondent was represented by Robert D. Clark, Esq. Petitioner is protesting the classification of the subject properties for tax year 2009.

The parties agreed to consolidation of the docket numbers for efficiency.

Both parties agreed that the valuation of the properties would not be considered at the hearing. The parties also agreed that classification was the sole issue at the hearing.

Petitioner is seeking an agricultural classification for the properties for tax year 2009.

Subject properties are described as follows:

**215.987 Acres (M/L) lying west of the Travois Subdivision, north of the
Sierra Vista Subdivision and abutting north Douglas County line.**

Douglas County, Colorado

Douglas County Schedule Numbers:

R0217824 (20 acres M/L) and

R0363813 (195.987 acres M/L)

The properties owned by the Prusse entities along with an adjacent ownership to the west (DC Associates) had been leased prior to 2008 by Mr. Donnell Britton pursuant to an oral agreement whereby Mr. Britton grazed 12-30 head of cattle and 2-4 horses. The agreement allowed Mr. Britton grazing rights in return for maintenance of fencing, supervision of the land, and management of trespassers and illegal hunters.

Mr. Britton was injured by a horse and died in the latter half of 2006. The lease was continued by Mr. Britton's heirs, successors or assigns through 2007. Mr. Britton's family, however, stopped bringing animals onto the subject properties after Mr. Britton's death.

Petitioner's witness, Mr. Irving Manuelito, testified he has been leasing the subject properties since 2008. Mr. Manuelito is an employee of the Arapahoe Hunt Club. He cares for the organization's kennels and horses and supplies horses for the use by the Hunt Club. Petitioner provided a lease, dated March, 2008, and renewed in May, 2009, formalizing the oral agreement between Prusse Land Company LLLP, Mr. Manuelito and Mr. William Moore, the owner of the property adjacent to the subject properties to the west (DC Associates). The 2008 lease was signed by Mr. David Prusse and Mr. Manuelito but does not contain Mr. Moore's signature.

Mr. Manuelito testified that the grazing season was approximately from May to September of each year. He also testified he traded fence repair for payments required in the lease. Mr. Manuelito indicated there was a lot of fence repair needed on the subject property due to trespassers who cut the fence lines to access the property with ATV's and motorcycles.

Mr. Manuelito has been grazing his 6-7 horses on the property, two of which were owned by the Hunt Club. One of Mr. Manuelito's horses was sold to a Hunt Club member in 2011.

Petitioner called Mr. David Prusse as a witness. Mr. Prusse indicated his organization purchased the subject properties in 1977 and had verbal leases with Mr. Donnell Britton throughout that time. In 2008 Mr. Prusse had verbally leased the property to Mr. Manuelito. Mr. Manuelito was to provide his own water tanks and was able to obtain water from an adjacent property owner, Mr. Osborne. In 2009, Mr. Osborne declined to continue providing water to the subject properties and an arrangement was made to purchase a water tap from the Sierra Vista Subdivision. This tap was put in place in the summer of 2009 along with new water tanks. Mr. Prusse also testified that a fence between the Prusse property and DC Associates was put in place by a buyer of the Prusse property who at some point in the past purchased the property but later defaulted. According to Mr. Prusse, Prusse entities and DC Associates have never intended to separate their properties by fencing.

Mr. Roger Prusse was also called as a witness for Petitioner. Mr. Prusse stated the owners agreed not to pressure Mr. Britton's widow and there were no cattle or horses grazing the property in 2007. Mr. Prusse provided additional testimony regarding a long history of trespass on the property and an annual requirement to repair fencing.

Respondent indicated the principle issue for agricultural classification for 2009 is whether the land was actually grazed in 2007, 2008 and 2009. Both parties have agreed and stipulated to agricultural use for 2009.

Respondent's witness, Louise McElroy, a Certified Residential Appraiser for Douglas County, testified a property must be used for agricultural purposes for the prior two years plus the current year to be classified as agricultural. According to Ms. McElroy, agricultural classification was removed from the DC Associates for 2007, 2008 and 2009. Ms. McElroy referenced photographs taken during 2008 on the DC Associates' property illustrating downed fences and no evidence of grazing. She concluded there was no containment within the combined DC Associates and Prusse properties as the fences were down and the land was essentially open to other ownerships on the south boundary. Photographs taken in February and November of 2008 were introduced to support the Respondent's contention there was no evidence of grazing.

Ms. McElroy also indicated there was insufficient evidence of a water supply. She considered Petitioner's exhibits 12 and 15 illustrating a water tank (exhibit 12) and a small pond (exhibit 15). The water tank shown in exhibit 12 is inadequate to contain water and has vegetation growth within the tank. The small pond was researched by use of aerial photographs taken between 2006-2011 during March, April and October. The photographs suggest the small pond to be an intermittent water source, insufficient to support a herd of cattle.

Petitioner contends the property was leased for agricultural purposes, either through verbal leases with Mr. Britton or with Mr. Manuelito. The downed fences observed by Ms. McElroy were interior portions not maintained by Petitioner as unneeded. Petitioner also suggests Respondent's appraiser only visited the property during seasons when cattle would not be present.

Respondent contends the property has not been consistently used for agriculture in the two prior years plus the current year required for agricultural classification. Respondent questions the March, 2008 lease arrangement with Mr. Manuelito, which intended to formalize the verbal agreement but was not signed by one of the parties. The property was not adequately fenced, and there was insufficient water and no evidence of grazing during 2007.

Petitioner presented insufficient probative evidence and testimony to show that the tax year 2009 valuation of the subject property was incorrect.

The Board was not compelled by Petitioner's interpretation of *Aberdeen Investo, Inc. v. Adams County*, 240 P.3d 398 (2009). In *Aberdeen*, the court held that to classify land as agricultural, "a property must be used as a farm or ranch during each of the preceding two years and the present tax year." *Aberdeen*, 240 P.3d at 402. Petitioner's brief states "[t]he court interpreted the statute as not requiring such use of the property **throughout** the previous two years because ranching and farming seldom occur on January 1." (Petitioner's Opening Brief, at page 4)(emphasis by Petitioner). The Board agrees the statute should not be intended to require uninterrupted farming and grazing despite the season. However, the Board is convinced that agricultural classification requires that the farming and/or grazing must occur during each of the preceding two years and the tax year in question. The Board finds there was no agricultural use of the subject properties in 2007.

The Board also finds the conclusions of *Douglas County Board of Equalization v. Clarke*, 921 P.2d 717 (Colo. 1996) to be supportive of Respondent's position that, in order to qualify for agricultural use, the property must be used as a farm or a ranch or be in the process of being restored through conservation practices "**in both of the two prior tax years** and the tax year at issue." (Respondent's Response Brief, at page 2)(emphasis by Respondent). The court in *Clarke* elaborated that "there must be actual grazing on the parcel, as defined in functional terms, during each relevant tax year to qualify for agricultural classification unless the land is subject to non-use for conservation purposes." *Clarke*, 921 P.2d at 723.

The Board was convinced that the subject properties were not used as either a farm or a ranch in 2007. Accordingly, the subject properties shall not be classified as "agricultural" for tax year 2009.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

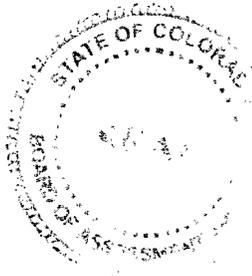
If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 28th day of October, 2011.



BOARD OF ASSESSMENT APPEALS

Handwritten signature of Diane M. DeVries in black ink.

Diane M. DeVries

Handwritten signature of Gregg Near in black ink.

Gregg Near

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.

Handwritten signature of Milla Crichton in black ink, written over a horizontal line.

Milla Crichton